

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Patrick Gleason (“Respondent”) is a Governing Board Member for the Gazelle Elementary School District.

This matter arose out of a referral from the County of Siskiyou, alleging a single violation of the Political Reform Act (the “Act”)<sup>1</sup> for failing to file a 2008 Annual Statement of Economic Interests (“SEI”) which was due by April 1, 2009.

The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

For the purposes of this Default Decision and Order, Respondent’s violation is stated as follows:

COUNT 1: Respondent Patrick Gleason, Governing Board Member for the Gazelle Elementary School District, failed to file an Annual SEI for 2008 which was due by April 1, 2009, in violation of Sections 87300 and 87302.

## **THE RESPONDENT**

This matter involves one respondent: Patrick Gleason has been serving as a Board Member for the Gazelle Elementary School District since 2001. Respondent was, at all times relevant to this Default Decision and Order, a Governing Board Member for the Gazelle Elementary School District.

## **DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT**

When the Fair Political Practices Commission (the “Commission”) determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the “APA”).<sup>2</sup> (Section 83116.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.) Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation’s form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent’s failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent’s right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent’s express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

## **PROCEDURAL REQUIREMENTS AND HISTORY**

### **A. Initiation of the Administrative Action**

Section 91000.5 provides that “[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action.” (Section 91000.5, subd. (a).)

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) informed of his right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred.

Documents supporting the procedural history are included in the attached Certification of Records (“Certification”) filed herewith at Exhibit A, A–1 through A–8, and incorporated herein by reference.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division

initiated the administrative action against Respondent in this matter by serving them with a Report in Support of a Finding of Probable Cause (the “Report”) by certified mail, return receipt requested, on December 2, 2009 (Certification, Exhibit A-1.) The original return receipt addressed to Respondent was signed by Diane Gleason, a competent member of Respondent’s household, on December 4, 2009, and was returned to the Enforcement Division. (Certification, Exhibit A-2.) Therefore, the administrative action commenced on December 4, 2009, the date the registered mail receipt was signed, and the five year statute of limitations was effectively tolled on this date.

As required by Section 83115.5, the packet served on Respondent contained a cover letter and a memorandum describing Probable Cause Proceedings, advising that Respondent had 21 days in which to request a probable cause conference and/or to file a written response to the Report. (Certification, Exhibit A-3.) Respondent neither requested a probable cause conference nor submitted a written response to the Report.

#### **B. Ex Parte Request for a Finding of Probable Cause**

Since Respondent failed to request a probable cause conference or submit a written response to the Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to Executive Director Roman G. Porter, on January 4, 2010. (Certification, Exhibit A-4.) Respondent was mailed a copy of the Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation Be Prepared and Served. (Certification, Exhibit A-5.)

On January 11, 2010, Executive Director Roman G. Porter issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A-6.)

### **C. The Issuance and Service of the Accusation**

Under the Act, if the Executive Director makes a finding of probable cause, he or she shall prepare an accusation pursuant to Section 11503 of the APA, and have it served on the persons who are the subject of the probable cause finding. (Regulation 18361.4, subd. (e).)

Section 11503 states:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief. Section 11505, subdivision (a), requires that, upon the filing of the accusation, the agency shall: 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the

respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, and 11507.7.

Section 11505, subdivision (b) set forth the language required in the accompanying statement to the respondent.

Section 11505, subdivision (c) provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On January 11, 2010, the Commission's Executive Director, Roman G. Porter, issued an Accusation against Respondent in this matter. In accordance with Section 11505, the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506 through 11508, and a cover letter dated March 15, 2010, were personally served on Diane Gleason, a competent member of Respondents' household, on March 25, 2010. (Certification, Exhibit A-7.)

Along with the Accusation, the Enforcement Division served Respondent with a "Statement to Respondent" which notified them that they could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, he would be deemed to have waived the right to a hearing. Respondent did not file a Notice of Defense within the statutory time period, which ended on April 9, 2010.

As a result, on May 17, 2010, Commission Counsel Ty D. Moore sent a letter to Respondent advising that this matter would be submitted for a Default Decision and Order at the Commission's public meeting scheduled for June 10, 2010. A copy of the Default Decision and

Order, and this accompanying Exhibit 1 with attachments, was included with the letter. (Certification, Exhibit A-8.)

Respondent appeared personally at the June 10, 2010 Commission hearing and stated that his 2008 SEI had been filed and that he had a copy of it with him at the hearing. Respondent then handed the Commissioners a copy of the document he was holding. (Exhibit A-9) At the suggestion of Gary Winuk, the Chief of Enforcement, the item was put over until the September commission hearing.

Commission Enforcement staff reviewed the document provided by the Respondent and found it to be a 2008 SEI signed by the Respondent and date stamped received by the Siskiyou County Clerk's Office on June 9, 2010. Because the SEI had been filed, even though it was filed the day before the Commission hearing, Commission staff attempted to reach a stipulated settlement with the Respondent. Respondent was unwilling to settle this case for a stipulated amount and provided no offer of settlement short of withdrawal of the default decision and order by the Enforcement Division.

Respondent was then sent a letter informing him that the Default Decision and Order would be placed back on the Commission agenda for the September 9, 2010 Commission hearing date. (Exhibit A-10). When the Commission hearing was re-scheduled to the September 17, 2010 hearing date, Respondent was notified of the change. (Exhibit A-11)

### **SUMMARY OF THE LAW**

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials that may be materially affected by their official actions be disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, Section 87300 requires every state and local agency to adopt and promulgate a conflict of interest code. Under Section 87300, the requirements of an agency's conflict of interest code

have the force of law, and any violation of those requirements is deemed a violation of the Act.

Section 87302, subdivision (a), provides that an agency's conflict of interest code must specifically designate the positions within the agency that are required to file statements of economic interests, disclosing reportable investments, business positions, interests in real property, and sources of income. Under Section 82019, subdivision (a), and Section 87302, the persons who are to be designated in an agency's conflict of interest code are the officers, employees, members, and consultants of the agency whose position with the agency entails making, or participating in making, governmental decisions that may foreseeably have a material effect on one or more of the person's economic interests.

Under Section 87302, subdivision (b), an agency's conflict of interest code must require every designated employee of the agency to file an annual SEI at the time specified in the conflict of interest code disclosing reportable investments, business positions, interest in real property and income held or received at any time during the previous calendar year or since the date the designated employee took office if during the calendar year. The applicable Conflict of Interest Code for the County of Siskiyou ("Conflict of Interest Code") requires that each designated employee file an annual statement on or by April 1 of each year. According to the 2008 Conflict of Interest Code, a Governing Board Member for the Gazelle Elementary School District is a designated position.

### **SUMMARY OF THE EVIDENCE**

Documents supporting the summary of the evidence are included in the attached Certification filed herewith at Exhibit A, A-9 through A-13, and incorporated herein by reference.

On January 1, 2001, Respondent Patrick Gleason was appointed as a Member of the Governing Board for the Gazelle Elementary School District and has continued to serve in this



position since his appointment.

As a Governing Board Member, Respondent is a “designated employee” as defined in Section 82019, subdivision (a), of the Act and in the Conflict of Interest Code. As required by Section 87302 and the Conflict of Interest Code, Respondent Gleason was required to file a 2008 SEI disclosing his economic interests held in calendar year 2008 by April 1, 2009.

On or about January 29, 2009, the Siskiyou County Clerk gave Respondent notice of his duty to file the statement by the April 1, 2009, deadline. On April 2, 2009, the County Clerk sent Respondent a letter advising him that his 2008 SEI was past due. (Certification, Exhibit A-9.) Respondent failed to file the 2008 SEI. On May 13, 2009, County Clerk Stacey Willison sent a second letter, by certified mail, to Respondent, advising him that his 2008 SEI remained past due. (Certification, Exhibit A-10.) She requested that he file the statement immediately. The letter further advised Respondent that if the delinquent SEI was not received by May 23, 2009, the matter would be referred to the Commission’s Enforcement Division. On or about July 21, 2009, after receiving no statement from the Respondent, the Siskiyou County Clerk referred the matter to the FPPC’s Enforcement Division. (Certification, Exhibit A-11.)

On or about August 4, 2009 and September 2, 2009, Political Reform Consultant, Adrienne Korchmaros, of the FPPC’s Enforcement Division sent communications to Respondent giving him the opportunity to enter into a settlement agreement and requesting that he file the past due SEI. (Certification, Exhibit A-12.) After receiving no response, on September 28, 2009, Ms. Korchmaros left a telephone message for Respondent requesting that he return the telephone call and also file the 2008 SEI. In response, Respondent left a return message on voice mail stating that he had filed a candidate statement. Again on September 28, 2009, Ms. Korchmaros left another telephone message for Respondent requesting that he again return her telephone call. (Certification, Exhibit A-13.) No response to this second telephone call was forthcoming. Despite the communications from both the Siskiyou County Clerk and the FPPC Enforcement Division, Respondent failed to file his 2008 SEI.

By failing to timely file his 2008 SEI by April 1, 2009, Respondent violated Government Code Sections 87300 and 87302.

### **CONCLUSION**

This matter consists of one count of violating Sections 87300 which carries a maximum possible administrative penalty of Five Thousand Dollars (\$5,000).

Failures to file SEI's have received fines on the lower end of the penalty range. Higher penalties are typically only awarded in cases where the respondent has accompanying violations, a prior history of non-filing, and/or prior prosecutions.

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Commission Enforcement staff reviewed the document provided by the Respondent and found it to be a 2008 SEI signed by the Respondent and date stamped received by the Siskiyou County Clerk's Office on June 9, 2010. Because the SEI had been filed, even though it was filed the day before the Commission hearing, Commission staff attempted to reach a stipulated settlement with the Respondent. Respondent was unwilling to settle this case for a stipulated amount and provided no offer of settlement short of withdrawal of the default decision and order by the Enforcement Division.

Respondent was then sent a letter informing him that the Default Decision and Order would be placed back on the Commission agenda for the September 9, 2010 Commission hearing date.. When the Commission hearing was re-scheduled to the September 17, 2010 hearing date, Respondent was notified of the change.

### **FACTORS IN AGGRAVATION**

Respondent Gleason's Assuming Office SEI, due on or by January 31, 2001, was filed 90 days late, and he has filed neither the required 2002 nor 2005 Annual SEI's.

### **FACTORS IN MITIGATION**

Respondent Gleason has no prior FPPC enforcement action. Respondent filed his delinquent 2008 SEI, although just a day before the June 10, 2010 Commission hearing at which his enforcement item was set for default hearing.

### **PENALTY**

The facts of this case, including the aggravating and mitigating factors discussed above, justify a fine of Two Thousand Dollars (\$2,000) for this violation.